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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:	)	
	)	No. 06-01195-PCW13
DAVID JOHN CASEY,	)	
	)	MEMORANDUM DECISION RE:
Debtor.	)	CONFIRMATION OF PLAN
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PATRICIA C. WILLIAMS, Presiding Judge

This case challenges the Court to define the role to be played by the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form B22C) in determining whether a Chapter 13 debtor has proposed a plan which will pay all projected disposable income as required by 11 U.S.C. § 1325(b) (1). The challenge arose from the Trustee's objection to confirmation of this debtor's proposed Chapter 13 plan.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereinafter "BAPCPA") in 11 U.S.C. § 1325(b) (1) requires that all "projected disposable income" be devoted to a plan for payment of unsecured creditors. The word "projected" is an adjective which modifies the term "disposable income," itself a defined term under BAPCPA. That term is defined in § 1325(b) (2) which states that the term ". . . means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended . . . for the maintenance or support of the debtor or a dependent of the debtor . . . ." Current monthly income is funds received within six months of the commencement of the case, less certain types of

1 funds. 11 U.S.C. §§ 101(10)(A) and (10)(B). The determination of  
2 which expenses are reasonably necessary is required to be made in  
3 accordance with subparagraphs (A) and (B) of 11 U.S.C. § 707(b)(2).

4 11 U.S.C. § 707(b)(2) contains what is commonly referred to as  
5 the "means test." That test calculates the debtor's monthly income  
6 in a manner very different than the calculation performed prior to  
7 BAPCPA. Historically, all funds received by a debtor at the time  
8 of the commencement of the case were considered income, whether in  
9 the form of wages, annual bonus, retirement pension payments, child  
10 support or some other form. Under BAPCPA, not only is the prior  
11 six months of income averaged, certain types of funds received are  
12 not included as income. This debtor, prior to the enactment of  
13 BAPCPA, would have been considered to receive significantly greater  
14 income than after the enactment of BAPCPA. Calculated as required  
15 by BAPCPA, the debtor's monthly income is \$4,965, and annual income  
16 is \$59,580. Actual income received each month totals \$6,761, and  
17 annual income totals \$81,132. Under either calculation, the debtor  
18 is an above-median income debtor as that term is used in BAPCPA.  
19 This dispute, however, does not involve questions arising on the  
20 income side of the calculations necessary to determine disposable  
21 income, but on the expense side.

22 As to above-median income debtors, the means test defines a  
23 debtor's expenses based upon a formula found in 11 U.S.C.  
24 § 707(b)(2)(A)(ii)(I).

25 The debtor's monthly expenses shall be the debtor's  
26 applicable monthly expense amounts specified under the  
27 National Standards and Local Standards, and the debtor's  
28 actual monthly expenses for the categories specified as  
Other Necessary Expenses issued by the Internal Revenue  
Service for the area in which the debtor resides, as in  
effect on the date of the order for relief, for the

1 debtor, the dependents of the debtor, and the spouse of  
2 the debtor in a joint case, if the spouse is not  
3 otherwise a dependent. Such expenses shall include  
4 reasonably necessary health insurance, disability  
5 insurance, and health savings account expenses for the  
6 debtor, the spouse of the debtor, or the dependents of  
7 the debtor. Notwithstanding any other provision of this  
8 clause, the monthly expenses of the debtor shall not  
9 include any payments for debts. In addition, the  
10 debtor's monthly expenses shall include the debtor's  
11 reasonably necessary expenses incurred to maintain the  
12 safety of the debtor and the family of the debtor from  
family violence as identified under section 309 of the  
Family Violence Prevention and Services Act, or other  
applicable Federal law. The expenses included in the  
debtor's monthly expenses described in the preceding  
sentence shall be kept confidential by the court. In  
addition, if it is demonstrated that it is reasonable and  
necessary, the debtor's monthly expenses may also include  
an additional allowance for food and clothing of up to 5  
percent of the food and clothing categories as specified  
by the National Standards issued by the Internal Revenue  
Service.

13 Subsequent subparts of § 707(b) further describe additional  
14 expenses which may be considered and allow adjustment of certain  
15 categories of the IRS expenses used in the formula. Bankruptcy  
16 Rule 1007(b)(6) requires debtors to file a Form B22C, which is an  
17 attempt to reduce the complicated provisions of § 707(b)(2) into a  
18 question and answer format comprehensible to debtors. Bankruptcy  
19 Rule 1007(b)(6) is necessary as the 2005 amendments to § 1325  
20 require that determination of disposable income start with current  
21 monthly income.

22 The Form B22C filed by this debtor calculates monthly expenses  
23 of \$5,505.90, however the debtor's actual monthly expenses  
24 according to Schedule J are \$4,780.32. In this District, it is  
25 common that application of the Internal Revenue Service standards  
26 required by the means test will result in expenses which are  
27 greater than the actual expenses of debtors. The Trustee's  
28 objection to confirmation is based primarily upon the argument that

1 by requiring unsecured creditors be paid "projected disposable  
2 income" under § 1325(b)(1) rather than "disposable income"  
3 referenced in (b)(2), Congress contemplated adjustments to the  
4 expenses listed in Form B22C and the means test. Simply stated,  
5 the Trustee argues that the actual expenses of the debtor should  
6 play a role in the determination of "projected disposable income."

7 **1. What constitutes projected disposable income under**  
8 **11 U.S.C. § 1325(b)(1)?**

9 Congress has defined the term "disposable income." Not all  
10 disposable income must be devoted to payment of unsecured  
11 creditors, but only the type of disposable income which falls  
12 within the definition of "projected." The addition of the  
13 adjective "projected" in § 1325(b)(4), requiring projected  
14 disposable income be devoted to unsecured creditors, further  
15 defines the type and nature of the disposable income considered for  
16 confirmation. The word "projected" means to plan, figure, or  
17 estimate for the future. *Webster's II New College Dictionary* 884  
18 (1995). It is a forward-looking concept. It requires a court to  
19 examine anticipated disposable income rather than historical  
20 disposable income, estimated disposable income, or some other type  
21 of disposable income.<sup>1</sup> The requirement to devote projected or  
22 anticipated disposable income to unsecured creditors is a  
23 recognition that Chapter 13 plans are in effect for some years and

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24  
25 <sup>1</sup>There may be situations where a debtor's financial  
26 circumstances changed during the six month period preceding  
27 commencement of the case. If so, the Form B22C calculation of  
28 income may not be a reliable indication of anticipated future  
income. That situation does not exist in the current controversy,  
and this opinion does not address any issues which might arise in  
such a situation.

1 that the financial circumstances of individuals change. The time  
2 of occurrence or extent of those changes may be known at the time  
3 the case is filed, at the time of confirmation, or at some time  
4 later in the case. To the extent the changes can be reasonably  
5 anticipated at the time of confirmation, they must be considered as  
6 they are "projected." The presence of expected or even known  
7 changes of financial circumstances does not, however, modify the  
8 calculation of disposable income under § 707(b). If no changes in  
9 financial circumstances are reasonably anticipated at the time of  
10 confirmation, the projected disposable income referenced in (b)(1)  
11 will be the same as the disposable income referenced in (b)(2).

12 This Court is in agreement with the analysis of "projected  
13 disposable income" required under § 1325(b)(1) as contained in  
14 *In re Jass*, 340 B.R. 411 (Bankr. D. Utah 2006).

15 The Court believes that the language of § 1325(b)(1)(B)  
16 is clear and unambiguous - section 1325(b)(1)(B)'s  
17 requirement that a plan propose to pay "projected  
18 disposable income" means that the number resulting from  
19 Form B22C is a starting point for the Court's inquiry  
20 only. Section 1325(b)(2) defines "disposable income" but  
21 § 1325(b)(1)(B) requires that a debtor propose a plan  
22 paying "projected disposable income." (emphasis added).  
23 The Court must give meaning to the word "projected," as  
24 it obviously has independent significance. The word  
25 "projected" means "to calculate, estimate, or predict  
(something in the future), based on the present data or  
trends." Thus, the word "projected" is future-oriented.  
By definition under § 1325(b)(2), the term "disposable  
income" is oriented in historical numbers. By placing  
the word "projected" next to "disposable income" in  
§ 1325(b)(1)(B), Congress modified the import of  
"disposable income." The significance of the word  
"projected" is that it requires the Court to consider  
both future and historical finances of a debtor in  
determining compliance with § 1325(b)(1)(B).

26 To require all debtors to propose plans paying the number  
27 resulting from Form B22C would essentially ignore the  
28 word "projected" and give meaning only to the term  
"disposable income." The only way for the word  
"projected" to have independent significance is if the

1 word modifies the term "disposable income."

2 Thus, the Court concludes that the plain meaning of  
3 § 1325(b) is dispositive of this issue. Under the clear  
4 meaning of the statute, a debtor must propose to pay  
5 unsecured creditors the number resulting from Form B22C,  
unless the debtor can show that this number does not  
adequately represent the debtor's budget projected into  
the future.

6 *Jass, supra*, at 415-416 (footnotes omitted) (emphasis added); see  
7 also *In re Fuller*, 346 B.R. 472, 479 (Bankr. S.D. Ill. 2006).

8 After examining the new statute and case law concerning  
9 § 1325(b)(1) and (b)(2), this court determines to follow  
the clearly emerging line of authority. It finds that  
10 the historical "disposable income" calculation newly  
created under § 1325(b)(2) is not dispositive of the  
11 "projected disposable income" amount needed to fund a  
chapter 13 plan. It agrees with those cases finding that  
12 "projected disposable income" is different from  
"disposable income" and that Congress, by leaving the  
13 word "projected" in § 1325(b)(1)(B), intended a  
distinction between the terms.

14 *In re Foster*, 2006 Bankr. Lexis 2259, at \*21 (Bankr. N.D. Ind.  
15 Sept. 11, 2006).

16 The conclusion that the term "projected disposable income" has  
17 a meaning different than the term "disposable income" is required  
18 by the long-standing rule of statutory construction that every word  
19 in a statute is to be given effect. *Northwest Forest Resource*  
20 *Council v. Glickman*, 82 F.3d 825, 834 (9<sup>th</sup> Cir. 1996).

21 In the situation now under consideration, absent one item  
22 addressed below, there is no indication that the debtor's financial  
23 circumstances will change. Thus, the "disposable income" reflected  
24 on the debtor's Form B22C, as adjusted below, will in reality be  
25 the debtor's "projected disposable income."

26 The Trustee correctly argues that it has been the experience  
27 in this District that above-median income debtors will pay less to  
28 unsecured creditors under BAPCPA than under the prior law. In this

1 District, many of the standard expenses allowed by § 707(b) would  
2 have been considered unreasonable and unnecessary and would have  
3 been disallowed under the prior law, resulting in greater plan  
4 payments. But it is the prerogative of Congress to define  
5 disposable income, and it has done so. Absent bad faith, lack of  
6 feasibility, or failure to comply with other confirmation  
7 requirements, plans which propose to pay properly calculated  
8 disposable income reasonably anticipated to be received over the  
9 life of a plan will meet the requirements of § 1325(b)(1). The  
10 conclusion is that for above-median income debtors, the disposable  
11 income calculated on Form B22C, as modified by any anticipated  
12 change in financial circumstances known at the time of  
13 confirmation, constitutes "projected disposable income" for  
14 purposes of § 1325(b)(1).

15 **2. What are the proper calculations to be made regarding**  
16 **specific line items on Form B22C?**

17 The Trustee also objects to confirmation based upon his belief  
18 that certain expenses shown on the Form B22C have not been properly  
19 calculated. The Trustee alleges amounts entered on lines 24, 28,  
20 29, 33, 49 and 52 of the Form B22C relating to allowed expenses are  
21 incorrect.

22 **Line 24:**

23 Line 24 allows the debtor to deduct an expense for food,  
24 clothing, personal care, etc., based upon the IRS National  
25 Standards for Allowable Living Expenses. To determine the amount  
26 of this expense, one refers to the table provided as part of the  
27 national standards and does a purely mathematical calculation based  
28 upon the number of people in the debtor's household and the

1 debtor's gross income. On the Form B22C, the debtor's calculation  
2 of monthly income of \$4,965 appears on lines 9, 10, 11, 12, 14, 18  
3 and 20.

4       However, the debtor has not used the monthly income figure of  
5 \$4,965 appearing on the Form B22C to calculate the expense allowed  
6 on line 24. In performing the calculation of the allowed expense  
7 under the IRS table, the debtor utilizes a monthly gross income  
8 figure of \$6,761, which is his actual income as revealed on the  
9 Schedule I. Neither Form B22C nor BAPCPA utilize actual monthly  
10 income to determine disposable income. Use of the higher actual  
11 income amount rather than the lesser amount of income calculated in  
12 accordance with Form B22C and BAPCPA results in a larger allowed  
13 expense under the IRS table. Utilizing the actual monthly income  
14 figure on the Schedule I, debtor claims an expense under the IRS  
15 table of \$1,306, whereas use of the monthly income amount  
16 calculated in accordance with Form B22C and BAPCPA would result in  
17 an expense of \$904.

18       The debtor argues that he is entitled to use gross income from  
19 Schedule I because the IRS table refers to "gross income," and Form  
20 B22C does not specifically refer to "gross income." However, it is  
21 obvious that the entries on those lines are gross income as the  
22 amounts on the relevant lines are "income" (as defined under  
23 BAPCPA) before any deductions.

24       The calculation of the amount of a debtor's "current monthly  
25 income," which results in the calculation of a debtor's disposable  
26 income, is to be made by use of Form B22C. Debtors may not "mix  
27 and match" forms. Debtor attempts to manipulate the calculations  
28 required by Form B22C and BAPCPA in his favor by using the amount



1 of his actual monthly income rather than "current monthly income"  
2 as required by BAPCPA. The expenses under Form B22C are related to  
3 the income reflected on Form B22C, not some other amount of income  
4 reflected on a different form and which is defined differently than  
5 the income on Form B22C.

6 The appropriate amount of the expense deduction is \$904.

7 **Lines 28 and 29:**

8 Lines 28 and 29 deal with the Local Standards for  
9 Transportation ownership/lease expenses. Use of the appropriate  
10 standard results on Line 28 in an average monthly payment for the  
11 first car of \$471. The average monthly payments for the second car  
12 on line 29 is \$332. Debtors are to list the 60 month average of  
13 their contractually required monthly payment and then deduct the  
14 lesser of the monthly payment under the IRS standard or the average  
15 contractual payment. If the average contractual payment is greater  
16 than the IRS standard, the debtor is to deduct zero.

17 Debtor has two vehicles, a 2004 TX Honda motorcycle requiring  
18 average contractual payments of \$219.64 and a 2004 Chevy Silverado  
19 2500 pickup requiring average contractual payments of \$855.19.  
20 Debtor lists his motorcycle as the first car and the pickup as the  
21 second car. Lines 28 and 29 on the Form B22C thus claim the  
22 following deduction for vehicle ownership expense:

IRS Standard First Car	\$471.00
Contractual Payment	\$128.12
Expense Allowed	\$342.88
IRS Standard Second Car	\$332.00
Contractual Payment	\$855.19
Expense Allowed	\$ - 0 -
Total Deduction for Car Ownership	\$342.88

1       The Trustee argues that debtor has again improperly  
2 manipulated the line items on Form B22C to the debtor's advantage.  
3 It is difficult to believe that a motorcycle would be the most  
4 important or frequently used vehicle for a two-person family living  
5 in a climate such as this. Whatever the debtor's opinion as to the  
6 importance of the motorcycle, the Trustee is correct that the form  
7 itself requires that the more expensive vehicle be considered the  
8 first car. The appropriate calculation should be:

9       IRS Standard First Car	\$471.00
Contractual Payment	\$855.19
10       Expense Allowed	\$ - 0 -

11       IRS Standard Second Car	\$332.00
Contractual Payment	\$128.12
12       Expense Allowed	\$203.88

13       Total Deduction for Car Ownership	\$203.88
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14 **Line 33:**

15       Line 33 allows, as an expense, court-ordered payments to a  
16 debtor's ex-spouse or dependants. The debtor lists the amount of  
17 \$600 as the court-ordered monthly payment, but admits that those  
18 payments will cease on the 24<sup>th</sup> month of the plan. However,  
19 11 U.S.C. 707(b)(2)(A)(iv) states that "the debtor's expenses for  
20 all priority claims (including priority child support and alimony  
21 claims) shall be calculated as the total amount of debts entitled  
22 to priority, divided by 60." Although the debtor argues that the  
23 total amount remaining due for support ( $\$600 \times 24 = \$14,400$ ) should  
24 not be amortized over 60 months, the statute so requires. The  
25 appropriate deduction for this line item should be \$224.39.

26       This result is also mandated by the requirement of  
27 § 1325(b)(1) to devote all projected disposable income to the  
28 payment of unsecured creditors. The disposable income of the

debtor will increase in the 25<sup>th</sup> month of the plan, as the debtor will no longer have this expense. The debtor's projected disposable income differs from disposable income in this respect and the plan payments must be adjusted accordingly in order to meet confirmation requirements.

**Line 49:**

Line 49 reveals a monthly payment of \$256.55 to satisfy the priority claim of the Internal Revenue Service. This would equal \$15,393 over 60 months, but fortunately for the debtor, the Proof of Claim filed by the Internal Revenue Service reflects a total priority claim of only \$13,463.33. Averaged over 60 months, that equals \$224.39, a \$32.16 difference. The debtor agrees that \$224.39 is the appropriate amount for the expense item on line 49.<sup>1</sup>

**Line 52:**

This line is the total of all deductions and must be modified due to the above analysis. Once expense deductions are properly calculated on Form B22C, the debtor's total deductions will decrease, potentially resulting in greater plan payments.

**3. Does § 1325(b)(4) allow an above-median debtor to propose a plan for less than five (5) years if debtor has no projected disposable income available to pay unsecured creditors under § 1325(b)(8)?**

The final basis for the Trustee's objection to confirmation is

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<sup>1</sup>**Line 50** - The Trustee discovered a mathematical error made by the debtor, which error disfavored the debtor as it reduced the amount of the deduction to which the debtor was entitled. The calculation appearing on this line will change, however, due to the changes in certain lines referenced above.

1 that the debtor has not, but is required to, propose a five (5)  
2 year plan. The plan proposed by these above-median income debtors  
3 is for a term of three (3) years and will pay nothing to unsecured  
4 claims. Subsection (b) of § 1325 establishes certain requirements  
5 for confirmation, one of which is subpart (4) which requires that  
6 debtor's projected disposable income received "in the applicable  
7 commitment period" be paid to unsecured creditors through the plan.  
8 The "applicable commitment period" is defined in (4)(A) as "not  
9 less than 5 years" for above-median income debtors. The following  
10 subpart (B) then establishes an exception by stating that in  
11 situations involving above-median income debtors, plans may have  
12 less than a five (5) year term if the plan pays unsecured claims in  
13 full within a shorter period.

14 Despite the clarity of § 1325(b)(4), there has been  
15 controversy regarding the necessity for above-median income debtors  
16 to propose five (5) year plans if unsecured creditors will not be  
17 paid in full in less than five (5) years. Plans are to provide  
18 that all projected disposable income is to be paid to unsecured  
19 creditors through the plan. § 1325(b)(1). If completion of Form  
20 B22C demonstrates that no monthly disposable income exists which  
21 could be paid to unsecured creditors under the plan, then arguably  
22 there is no rationale for a five (5) year plan. *In re Fuger*, 347  
23 B.R. 94 (Bankr. D. Utah 2006) involved above-median income debtors  
24 who had "negative disposable income," i.e., their Form B22C stated  
25 that monthly income was less than monthly expenses. The court  
26 concluded that the determination of "applicable commitment period"  
27 in (b)(4) was ambiguous when considered in the context of (b)(1) as  
28 the phrase could be interpreted to refer to a length of time or a

1 monetary amount. Even though the debtors proposed a plan of less  
2 than five (5) years, the plan was confirmed. The court read §  
3 1325(b)(4) to require debtors to commit all disposable income  
4 projected to be received in five (5) years to unsecured creditors.  
5 As that amount of income was zero, the debtors could confirm a plan  
6 of less than five (5) years. See also, *In re Alexander*, 344 B.R.  
7 742 (Bankr. E.D.N.C. 2006).

8 This Court perceives no ambiguity in § 1325(b)(4). Once the  
9 amount of projected disposable income has been determined, whether  
10 that be by sole reliance on Form B22C or the Schedules I and J or  
11 some other calculation, (b)(1) simply states that it must be used  
12 to pay unsecured claims for an "applicable commitment period,"  
13 which, in accordance with (b)(4), is either three (3) years or five  
14 (5) years. Subpart (b)(4) makes no reference to any monetary  
15 analysis to be used in determining the length of the plan, but  
16 refers to a measurement of time. It is irrelevant whether the  
17 projected disposable income is zero or \$1,000 or some other amount.  
18 If unsecured claims are not to be paid in full, the plan must have  
19 a length of three (3) years for below-median income debtors and not  
20 less than five (5) years for above-median income debtors.

21 The debtors in *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo.  
22 2006) filed a Form B22C demonstrating projected disposable income  
23 of \$178.10 per month and were above-median income debtors. The  
24 proposed plan was for less than five (5) years. Finding that the  
25 plain language of (b)(4) imposed a five (5) year plan requirement,  
26 the Utah court refused to confirm the proposed plan.

27 The *McGuire* decision cites to the earlier decision of *In Re*  
28 *Schanuth*, 342 B.R. 601 (Bankr. W.D. Mo. 2006) which involved below-

1 median income debtors and thus analyzed the three (3) year plan  
2 requirement of (b)(4).

3 First and foremost, the plain language of § 1325(b)(1)  
4 and (4) supports a temporal interpretation of ACP. The  
5 term itself, "applicable commitment period," uses a word  
6 with temporal meaning: "period" means a "chronological  
7 division." The length of that chronological division is  
8 described in temporal terms - 3 years or 5 years. And,  
9 perhaps most telling of all, § 1325(b)(4)(B), the  
10 provision that specifically contemplates plans shorter  
11 than 3 or 5 years, uses the same temporal terms - a  
12 debtor's ACP "maybe less than 3 or 5 years . . . but only  
if the plan provides for payment in full of all allowed  
unsecured claims over a shorter period.

13 When a statute's language is plain, the sole function of  
14 the court is to enforce it according to its terms. Here,  
15 the Court finds that the plain language used to describe  
16 and define the scope of the commitment a debtor must make  
17 of disposable income in a chapter 13 plan clearly  
18 indicates that that commitment is temporal in nature.

19 *In re Schanuth, supra*, at 607 (footnotes omitted).

20 The temporal requirement contained in (b)(4), which is  
21 applicable to above-median income debtors, is five (5) years. A  
22 plan which provides less than full payment to unsecured creditors  
23 and is for a period of less than five (5) years cannot be  
24 confirmed. The debtors in this case must propose a plan with a  
25 length of five (5) years.

#### 26 **CONCLUSION**

27 "Projected disposable income," as referenced in § 1325(b)(1),  
28 differs from "disposable income" as referenced in § 1325(b)(2).  
The disposable income as calculated on Form B22C, after  
consideration of anticipated changes in future disposable income  
reasonably known at the time of confirmation, constitutes the  
debtor's projected disposable income. The specific lines  
referenced as incorrect on the Form B22C should be modified as  
stated above. The plan should also be modified to provide for a

1 five (5) year plan, as the plan does not provide for payment in  
2 full to all unsecured creditors and the debtor is an above-median  
3 debtor. The Trustee's Objection to Confirmation of Plan is  
4 sustained, and the debtor is granted leave to file a modification  
5 of his plan consistent with the conclusions above.